IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.
CIVIL APPLICATION No.4208 of 2005.

In

FIRST APPEAL No. 20036 of 2005.

Oriental Insurance Co.Ltd. ..Applicant.

Vs.

Taibai Ganpat Bhanusghare. ..Respondents.

C.Vekatachalam, Advocate for the Applicant.

V.A. Shastry for the Respondents.

CORAM: S.B.DESHMUKH,J.

DATED: 12/9/06.

P.C.:-

1] Heard the learned Counsel for the Applicant/Appellant/Insurance Company as well as the Respondents.

2] Perused the order passed by this Court (Coram:D.G.Deshpande,J) on 21st September, 2005.

3] The learned Counsel for the Appellant submits, that an amount of Rs.7,41,349/- is deposited by the Applicant/Insurance Company

in the Tribunal on 12th September,2005. She also possesses the receipt of such deposit. The order passed by this Court dated 21st September, 2005 directs Insurance Company to deposit 50% of the amount of compensation before MACT,Pune, within six weeks from the date of passing of said order. The learned Counsel for the Applicant submits that to protect the interests of the Applicant/Insurance-Company, entire decretal amount is deposited in the Tribunal on 12th September, 2005. The learned Counsel for the Respondents has tendered certified copy of the Application Exh.15 filed on behalf of the Respondent No.3 in Darkhast No.151/2005. It appears that Insurance Company/Present Applicant, Opponent No.3 in Darkhast No. 151 of 2005, has requested for withdrawal of Rs.3,70,675/-. The Tribunal accordingly ordered repayment of the amount and Cheque No.014207 was handed over to the Oriental Insurance Company/Applicant in this Application and the Opponent No.3 in Darkhast No.151 of 2005.

4] The Award passed by the Trial Court is

virtually in the nature of money decree. The Applicant/Insurance Company is seeking stay to the Judgment and Award passed by the Tribunal. After hearing the learned Counsel for the Applicant, in my view, Applicant/Insurance Company needs to be directed to deposit entire decretal amount in the Tribunal, within a period of four weeks from today. It is clarified that the Insurance Company/Applicant has already deposited 50% amount in the Trial Court which can be considered while depositing remaining 50% of the amount of compensation, as noted above. It is further made clear that in case on failure on the part of the Applicant/Insurance Company to deposit remaining 50% of the amount of compensation before MACT, stay granted by this Court on 21st September, 2005 as well as by this Order shall stand vacated without further reference to this Court.

5] The learned Counsel for the Respondent seeks withdrawal of the amount i.e. 50% of the amount of compensation deposited in MACT, Pune. The learned Counsel for the Applicant referred to the Judgment of the Apex Court

reported in **2005 ACJ 721 in the matter of National Insurance Co.Ltd. Vs. Bommithi Subbhayamma and others.** According to the learned Counsel for the Respondent/Claimant, facts in the present case are similar to the facts in the cited Judgment of the Apex Court in the matter of **National Insurance Co.Ltd.Vs. Swaran Singh and others reported in 2004 ACJ 1.** The Apex Court in the matter of **National Insurance Co.Ltd. (supra)** considered the provisions laid down under sub Section (2) of Section 149 and held that the Insurance Company is liable to satisfy the Award in favour of the third party at the first instance and then to recover the awarded amount from the owner or driver of the vehicle even where the insurance company could establish breach of terms of policy on the part of the owner of the vehicle.

6] Suffice it to note, in the present case, the learned Tribunal has recorded a finding against the Insurance Company/Applicant as well as owner that they are jointly and severally liable and responsible to make the payment of compensation. In this view of the

matter, in my view, the Applicant/Insurance Company can be directed to deposit entire decretal amount as noted in the foregoing paras.

7] The learned Counsel for the Respondents seeks liberty to withdraw the amount of compensation from the Tribunal which is, as on today, 50% of the amount of compensation. Since the Insurance Company/Applicant has withdrawn an amount of Rs. 3,70,675/- from the MACT, Pune, at this stage, in my view, the Respondents can be permitted to withdraw this 50% of amount of compensation deposited in the Tribunal on the personal undertaking of the Respondent No.1 Smt.Taibai Ganpat Bhanusghare, Respondent No.2 Ku. Ahilya Ganpat Bhanusghare, Respondent No.3 Ku. Shaila Ganpat Bhanusghare and Respondent No.5 Reobai Waghu Bhanusghare.

8] The copy of Application and Order below Exh.15 is taken on record and marked by letter "X" for identification purpose.

9] It is made clear that even if the

Respondents are permitted to withdraw 50% of the amount of compensation from the Tribunal still the Applicant/Insurance Company has to deposit the remaining 50% of the amount of compensation in the Tribunal and thus the interests of the Applicant/Appellant are protected upto the extent of 50% of amount of compensation.

10] Civil Application is accordingly allowed and disposed of in above terms.

11] The M.A.C.T.Pune is directed on receipt of 50% of the amount of compensation from the Applicant/Insurance Company within a period of four weeks, as directed above,to invest said amount with any Nationalized Bank, initially for a period of seven years and in the absence of any order from this Court said F.D.R. shall be renewed for three years every time.

12] Since the Respondent Nos. 2 and 3 are concerned, according to the learned Counsel for the Respondent, both of them have attained majority. Liberty in favour of the Respondents, in case of urgency like marriage

of Respondent No.2 and 3 or any other eventuality, to move this Court is granted.

[S.B.DESHMUKH,J.]